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UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

SECURITIES AND EXCHANGE) Civil Action No.
COMMISSION,) 1:21-cv-00260-PB
Plaintiff,)
vs.) VOLUME 1
LBRY, INC.,) (Pages 1 to 339)
Defendant.)

CONFIDENTIAL DEPOSITION OF
DR. BORIS RICHARD
VIA WEBEX VIDEOCONFERENCE
Wednesday, March 30, 2022

REPORTED BY:
ELBIA BAIRE
JOB NO. 220330LHR

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1 A. That is correct.

2 Q. And how many matters have you worked
3 with Perkins Coie -- on how many matters have
4 you worked with Perkins Coie?

5 A. To the best of my recollection, this
6 would be the second one.

7 Q. Okay.

8 In your expert report, which is
9 Exhibit 137, do you disclose that you had
10 had -- you had the assistance of four other FTI
11 Consulting employees to prepare your report?

12 MS. MECHANIC: Objection.

13 A. Let me review --

14 MS. MECHANIC: Marc, we have a hard
15 copy, clean copy of this -- of his report.

16 MR. JONES: Rachel, if you -- if you
17 are suggesting that you could put it in front
18 of him, it could move things along, I'm happy
19 to have you do that.

20 MS. MECHANIC: I'll give Dr. Richard
21 the option.

22 Whatever you prefer.

23 A. In paragraph seven, I say that
24 "Staff at FTI Consulting have assisted me by
25 performing work at my direction."

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1 Q. Okay. And can you tell me the
2 billing rates of those four staff?

3 MS. MECHANIC: Objection.

4 MR. JONES: What's the objection?

5 MS. MECHANIC: The objection is that
6 you are not entitled to the billing rates of
7 consulting experts.

8 MR. JONES: Okay. We don't debate
9 that now. But yes, we are.

10 MS. MECHANIC: Well --

11 Q. Let me ask you this, Dr. Richard.
12 Did the work of those four people go
13 into your production of this report that is
14 Exhibit 137?

15 A. They contributed.

16 Q. Did those four people -- did those
17 four people produce work that you relied on in
18 forming your expert report?

19 A. Yes.

20 Q. Okay. Give me the billing rates of
21 those four individuals, please.

22 MS. MECHANIC: Objection. You are
23 not entitled to the billing rates of non -- of
24 non-testifying experts.

25 MR. JONES: Your objection is noted.

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1 MS. MECHANIC: You can ask Dr. --
2 you can ask Dr. Richard his billing rate. If
3 he knows it sitting here today.

4 MR. JONES: Rachel, I'm going to ask
5 the question I asked. And if you are going to
6 instruct him not to answer, we can bring it up
7 later.

8 MS. MECHANIC: Okay.

9 MR. JONES: Are you instructing him
10 not to answer?

11 MS. MECHANIC: Yes.

12 MR. JONES: On what grounds?

13 MS. MECHANIC: On the ground that
14 you are not entitled to -- that's not a
15 required disclosure.

16 MR. JONES: It is required under
17 Rule 26. We've talked about this before.

18 MS. MECHANIC: Well, you've said
19 that before. I don't think we've ever agreed
20 to that. Our understanding is that what you
21 are entitled to is the -- the -- the -- the
22 compensation that Dr. Richard received in
23 connection with his work.

24 I'm not aware of any principle or
25 law that requires us to give underlying hourly

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1 rates of his team.

2 But -- you know, so yes, we are
3 going to instruct him not to answer because --
4 we can talk about it later.

5 Q. Dr. Richard, consistent with --
6 consistent with Federal Rule of Procedure 26,
7 would you please tell us the compensation that
8 was paid for this study.

9 A. Is that a question to me?

10 Q. Yes, it is.

11 A. Can you clarify your question? What
12 do you mean by "compensation paid for this" --

13 Q. How much was -- how much was FTI
14 paid in total for the report and its exhibits
15 that you have in front of you as Exhibit 140 --
16 excuse me, 137?

17 A. I was not handling the invoices in
18 this particular matter. All I can remember is
19 it's probably in -- in the vicinity of 160,
20 \$150,000 dollars.

21 Q. Okay. And how much of that is
22 billing for your work specifically?

23 MS. MECHANIC: To the best of your
24 recollection.

25 A. It would be a fraction of that total

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1 MS. MECHANIC: Objection.

2 A. To the best of my knowledge, based
3 on what we were given, we were given 12
4 addresses. And in addition to that, we looked
5 at the history of the -- of the activities by
6 those three funds. We identified additional
7 six addresses that are affiliated with LBRY.

8 So the sum of those two numbers are
9 18 addresses. So based on the information that
10 we have, this is what we based -- this is what
11 I based my analysis on.

12 Q. So you were able to identify LBRY
13 wallet addresses that LBRY itself did not
14 identify to you?

15 MS. MECHANIC: Objection.

16 A. I -- you know, based on -- based on
17 what I understand, we were given the original
18 list of 12 addresses. And we identified
19 additional six from -- from the fund -- funds
20 transfer records.

21 Q. So yes?

22 A. So the -- the ultimate list of
23 addresses was slightly greater compared to the
24 original list that was given to us.

25 Q. Dr. Richard, show me in Exhibit 1 --

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1 everybody to be equivalent to removing certain
2 transactions stored on a blockchain.

3 Q. So your testimony --

4 A. I'm just rephrasing the removal of
5 transactional records, by relabeling it and
6 calling it on-chain activity in footnote 76.

7 Q. Let me see if I understand your
8 testimony, Dr. Richard.

9 Are you telling me that you did not
10 need to mention this part of your methodology
11 because it was generally understood that that's
12 what you were doing?

13 MS. MECHANIC: Objection.

14 A. I included footnote 76 to focus and
15 to show the source which we used to identify
16 the activity to be removed. I did not intend
17 footnote 76 as an additional alternative
18 description of the methodology that was used to
19 remove certain on-chain activity.

20 It was designed specifically to
21 refer the reader to the sources that we used to
22 identify that activity to be removed.

23 Q. But, Dr. Richard, one of the sources
24 that you used for your report is a list of
25 wallets that you received from LBRY, correct?

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1 A. That is correct.

2 Q. And you do not disclose that list of
3 wallets anywhere, correct?

4 MS. MECHANIC: Objection.

5 A. Yeah, it appears not to be disclosed
6 in the report.

7 Q. Okay. Was it -- was that list of
8 wallet addresses key to the analysis that you
9 did in your report?

10 MS. MECHANIC: Objection.

11 A. The address the -- the addresses
12 that we know to be affiliated with LBRY is used
13 to identify the -- the list of transactions to
14 be removed from the on-chain activity to
15 capture the user related on-chain activity.

16 So I would put it this way, we did
17 more than just removing the operational
18 activity of the three premine funds. We -- I
19 was more conservative in this approach. So
20 therefore, in addition -- effectively in
21 addition to removing all the on-chain
22 activities of the three premine funds by the
23 LBRY, we also removed additional transactions
24 that were somehow in any way affiliated or
25 associated with the LBRY addresses.

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1 So we did a double-check --
2 double-check and we wanted to remove and be
3 conservative in estimating the non-affiliated
4 economic activity on-chain for the LBRY
5 network.

6 Q. So, Dr. Richard, am I understanding
7 you right that you removed more than you said
8 you removed in paragraph 68?

9 MS. MECHANIC: Objection.

10 A. Yes. We removed -- we removed a
11 large amount of activity. That's correct.

12 Q. Okay. And if I wanted to recreate
13 your methodology based on your description of
14 how you determined on-chain transaction
15 activity, how would I do that?

16 A. There are two ways -- there are two
17 ways that you could do it. The first one, the
18 transaction records provided by LBRY as they
19 pertain to the three premine fund, those
20 records, they have transaction hashes. So you
21 can go directly to the blockchain explorer and
22 identify those transactions.

23 In fact, the tokens -- the number of
24 tokens transferred and the purpose of that
25 transfer is -- is listed in -- in those records

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1 anyway.

2 In addition, you can identify
3 transactions to be removed on-chain if you have
4 a list of addresses. You just -- you go to
5 the -- if you don't want to use
6 sequel-structured approach the way we use it,
7 you can go to the LBRY blockchain explorer,
8 type in an address and it will give you the
9 history of transactions associated with that
10 address.

11 Including the tokens. Including the
12 dates. Including the destination address. So
13 you just remove that from the -- from the
14 on-chain activity.

15 Q. Dr. Richard, you can't do that
16 unless somebody tells you that that particular
17 wallet address is associated or controlled by
18 LBRY, correct?

19 MS. MECHANIC: Objection.

20 A. You need to know if -- if the
21 LBRY -- if -- if a particular address is -- is
22 affiliated with LBRY, Inc. Yes.

23 Q. So without the list of wallet
24 addresses that you deducted, I cannot reproduce
25 your results, correct?

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1 MS. MECHANIC: Objection.

2 A. You can -- you can reproduce -- you
3 can reproduce a large portion of it. Because
4 those transaction hashes that are -- are in the
5 -- call it credit reports, you don't need to
6 know addresses for those. But it's addition
7 transactions that are affiliated with another
8 12 addresses, yes, you do these those 12
9 addresses.

10 Q. Were the addresses that you received
11 from LBRY prior addresses that LBRY used for
12 the three funds or just the ones it was
13 currently using?

14 A. I cannot --

15 MS. MECHANIC: Can you repeat that?
16 Our audio cut out.

17 MR. JONES: I'm sorry. Sometimes if
18 I look away for a minute, the audio might be a
19 problem. Or maybe it's on your end. But let
20 me try it again.

21 Q. Were the wallet addresses that you
22 received from LBRY prior addresses that LBRY
23 used for the three funds or just the current
24 addresses they were using for the three funds?

25 MS. MECHANIC: If you know.

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1 destination of where one of the output goes
2 into.

3 Q. And in here, there's two
4 destinations.

5 A. For this -- yeah, there are two
6 destinations.

7 Q. So the 159 million LBC go into two
8 wallets, one ending in 7WC and one ending in
9 JA, correct?

10 A. They go to two addresses.

11 Q. Okay. Too small to see?

12 A. Yes. I'm not sure if they're a part
13 of the same wallet or not.

14 Q. Does -- does the blockchain know
15 whether it's the same wallet?

16 MS. MECHANIC: Objection.

17 A. The blockchain -- the blockchain
18 does not know it.

19 Q. All right. So if the blockchain
20 does not know it's the same wallet, the
21 blockchain can't be doing any sort of deduction
22 from the transaction amount based on affiliated
23 wallets, correct?

24 MS. MECHANIC: Objection.

25 A. In principle -- yeah, in principle,

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1 blockchain does not know it.

2 Q. Right.

3 So here, if it doesn't know it,
4 basically what the blockchain is recording is
5 159 million going to two places.

6 MS. MECHANIC: Objection.

7 Q. Correct?

8 A. Correct.

9 Q. All right. And it's recording that
10 as can be seen in the amount box on Exhibit 149
11 as 159 million LBC transaction, correct?

12 A. Well, it shows 159 as an input.

13 Q. I'm asking you, Dr. Richard, about
14 the amount box.

15 What does the amount box say on
16 Exhibit 149?

17 A. The balance?

18 MS. MECHANIC: You want him to read
19 the document --

20 MR. JONES: I do.

21 MS. MECHANIC: -- back to you?

22 MR. JONES: Yes.

23 MS. MECHANIC: Okay.

24 A. Okay. Amount LBCs, that's the
25 amount -- that's amount of this particular

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1 MS. MECHANIC: Objection.

2 A. If -- can you repeat the question
3 again? I'm sorry.

4 Q. Sure.

5 If Exhibit 147, the on-chain
6 transaction data, does not deduct all of the
7 LBRY wallet activity, would that introduce
8 error into the results of your reporting in
9 Exhibits 5A, 5B, 6, 7A and 7B?

10 MS. MECHANIC: Objection.

11 A. If -- if we missed some of the LBRY
12 related activity, that's correct.

13 Q. Okay.

14 A. It could -- it could introduce some
15 error.

16 Q. And does the -- the concept that the
17 whole wallet amount is transacted on-chain,
18 does that throw off your on-chain transaction
19 volume estimations for 5A, 5B, 6, 7A and 7B?

20 MS. MECHANIC: Objection.

21 A. In principle, it might. But I don't
22 know the quantification of that particular
23 impact.

24 Q. Well, you -- you want your on-chain
25 transaction volume to be measuring user

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1 activity, right?

2 A. I'm doing the best effort to do
3 that, yes.

4 Q. Right.

5 If a user tips one LBC to a content
6 creator, you want that to register as one LBC
7 of volume, correct?

8 MS. MECHANIC: Objection.

9 A. That's -- that's correct. Yes.

10 Q. So if -- if the transaction volume
11 that the block is recording is actually a
12 thousand LBC for that transaction because
13 there's a thousand LBC in that user's wallet,
14 your on-chain transaction volume for that
15 transaction is off, correct?

16 MS. MECHANIC: Objection.

17 A. Well, it depends if it goes back to
18 the change address or not. If it's a full
19 amount, then there is no error. If there is a
20 change address related, then one LBC recorded,
21 that would be fair representation of the -- of
22 the actual activity that happened.

23 Q. Right.

24 For that transaction, at least as
25 you are saying, if it goes to a different

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1 address, that's a thousand times off what you
2 would want it to be?

3 MS. MECHANIC: Objection.

4 A. I'm not sure. I have to look at
5 some specific examples of -- of the
6 transactional activity related to particular
7 users.

8 Q. But you would want it to be one? A
9 tip of one should be one on-chain transaction.

10 A. Ideally, yes.

11 Q. Okay. Well, ideally, and in order
12 to make the assumption that on-chain
13 transaction volume is representative of user
14 activity, correct?

15 A. I want to represent the user
16 activity, yeah, to the best possible way.
17 Correct.

18 Q. Right.

19 And to do that, you need your
20 on-chain transaction volume to record the
21 amount of transaction not the total amount of
22 the wallet, correct?

23 MS. MECHANIC: Objection.

24 A. I definitely -- not the amount --
25 not -- not the balance of the wallet.

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1 Q. Okay. Can I direct you to -- one
2 second.

3 Can I direct you to page 144,
4 starting on line ten.

5 A. Line ten --

6 Q. It's one that says 1218, then ten.

7 A. I see line ten.

8 Q. Can I have you read there to the end
9 of the page.

10 A. Yup.

11 (At this time, the witness
12 perused the aforementioned
13 item.)

14 A. Okay. I'm done reading.

15 Q. Okay. And do you see there that --
16 that Mr. Kauffman is testifying, in fact, that
17 he -- he -- he is asked whether there could
18 potentially be more than a thousand wallet
19 addresses associated with LBRY.

20 And he says, "You can end up with a
21 large amount of addresses with really small
22 amounts of LBC in them," correct?

23 A. Yes. I have read that.

24 Q. All right. And so does the fact
25 that there was potentially a large amount of

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1 LBRY wallets a concern to you when you were
2 doing your analysis of the number of wallet
3 addresses?

4 MS. MECHANIC: Objection.

5 A. It is not a concern on my part.

6 Because, again, the -- the quantification and
7 the timeline of the address -- cumulative
8 number of addresses is -- is -- only should be
9 taken in the context together with the analysis
10 that I performed later to show that the address
11 creation is -- is correlated and tracks in a
12 positive way the additional functionality and
13 additional utility features that are available
14 to the users on the LBRY -- on the LBRY
15 blockchain.

16 So secondly, I would also say that
17 if you look at the first exhibit, one of my
18 exhibits tracks the number of addresses with
19 non-zero balances of LBRY credits. And by the
20 end of the period, the number of those
21 addresses is about 12 million.

22 And from -- from researching the
23 data, I do know that the number of users, let's
24 say by -- by December 2020, when the Odysee was
25 released, it was about 9 million. So the

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1 Q. Let me know when you've done that.

2 A. I have -- I have done that.

3 Q. Okay. And so columns E, F and G are
4 for the 30-day estimation window, correct?

5 A. Correct.

6 Q. And columns H, I and J are for a
7 90-day estimation window?

8 A. Correct.

9 Q. And columns K, L and M are for a
10 180-day estimation window, correct?

11 A. Correct.

12 Q. Why did you not include the 180-day
13 estimation result in your report?

14 A. I -- I did this just to check and to
15 confirm if I expand my sample period from
16 90-day to 180 days I will get similar results.
17 So it was in some sense a test of robustness of
18 the sample period that I chose -- that I chose
19 to use.

20 Q. And sometimes you do get the same
21 result with 180-day test, correct?

22 A. Yes.

23 Q. And sometimes you don't? Correct?

24 A. I don't recall, you know,
25 day-by-day, the comparison between different --

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1 between different sample periods.

2 Q. Well, so if we look at that sheet,
3 you can see at least here, in row 56 -- excuse
4 me, not 56, 55, your 180-day test is showing
5 that that is not statistically significant at
6 the 180-day estimation window, correct?

7 A. Not at a five percent significance
8 level.

9 Q. Right. And, in fact, for that same
10 line, it's not significant for the 30-day
11 estimation window at the five percent
12 significance level as well, correct?

13 A. That is correct. The -- it's 1.39.

14 Q. It's only for the 90-day that it's
15 statistically significant for the 95 percent
16 confidence integral, correct?

17 A. That is correct.

18 Q. Okay. And yet, in the last column
19 when you say it's statistically significant,
20 you just indicate that it is without
21 designating that it is for one and not for the
22 other, correct?

23 MS. MECHANIC: Objection.

24 A. I said 30 or 90 days. So I fully
25 disclose which of -- which set of the sample

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1 Q. Doctor, I'm asking, I think, a
2 different question. And let me try to put it
3 to you another way. See if I can get at it.

4 Should your model remove the T minus
5 one day, the T day, and the T plus one day from
6 the estimation window in order to remove the
7 effect of the announcement from the results in
8 the estimation window?

9 MS. MECHANIC: Objection.

10 Q. Do you know, Doctor?

11 A. Yes.

12 Q. Did you say yes?

13 A. I said yes. Yes. Yes. Yes.

14 Q. So if you look down column G as in
15 George, V as in Victor, and you look down to
16 column -- row 45, you see 12/12/2019?

17 A. Which tab are we looking at?

18 Q. The regression prep tab.

19 A. Okay.

20 Q. All right. So you see that in line
21 45 GV as in Victor 45, it has 12/12/2019?

22 A. Yes, I do.

23 Q. And then the next row has
24 12/14/2019?

25 A. Yes.

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1 Q. So does that tell you that when you
2 made this model, you and your team only removed
3 the day of the event and not the day before or
4 after?

5 MS. MECHANIC: Objection.

6 A. I'm not -- I'm not sure sitting and
7 looking at this right now because I see other
8 entries where two days were reviewed. So -- I
9 have --

10 Q. Two days seeing reviewed.

11 A. Well, for example, 12/18/2019, and
12 then the next one is 12/21/2019.

13 Q. Okay. So --

14 A. There are two observations are
15 removed here. So sitting in this chair right
16 now, I can not tell you exactly why -- you
17 know, if -- if it was a three-day period
18 removed from this particular set up.

19 Q. You have your exhibits in front of
20 you, sir?

21 Actually, you don't even need
22 that --

23 A. I just switched to --

24 Q. Can you go to the announcements
25 worksheet in the same Exhibit 143?

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1 A. Yes. Okay.

2 Q. And you see here looking at in rows
3 61 and 62 the reason that -- there are two
4 events, one on 12/19/19 and 12/20/2019, that
5 you are analyzing?

6 A. I do see that. Yes, I do see that.

7 Q. Right.

8 And so does that explain why there
9 are two days removed in -- in -- in the time
10 period we were just looking at in the
11 regression prep worksheet?

12 A. No. I'm not sure. I cannot -- I'm
13 not prepared to answer this question. As to
14 whether this particular event is related to the
15 fact that one observation was removed.

16 Q. So you don't know whether or not one
17 day was removed or three days was removed?

18 MS. MECHANIC: Objection.

19 A. Looking at this spreadsheet now, no,
20 I do not. My instruction that I gave was very
21 clear.

22 Q. But three days should have been
23 removed, correct? That was the clear
24 instruction that you gave?

25 A. I believe so, yes.

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1 Q. And if you have not -- if your
2 team -- let's put it on your team now, I guess.

3 If your team has not removed
4 three days, then your estimation windows are
5 miscalculating what is needed for the abnormal
6 return, correct?

7 MS. MECHANIC: Objection.

8 A. They may or they may or may not. So
9 depending on the -- depending on the size of
10 the sample -- depending on the size of the
11 sample period.

12 Q. Well, your sample periods are
13 30 days and 90 days, correct?

14 A. That is correct.

15 Q. So in either sample, you are
16 including two days that the news that you are
17 analyzing is effecting in trying to establish
18 the baseline against which you are judging it.

19 MS. MECHANIC: Objection.

20 A. I'm sorry. Can you repeat again?

21 Q. Well, in your estimation windows,
22 you are including two days where you say that
23 the news affects the price or potentially
24 affects the price.

25 A. Three days.

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1 Q. Right.

2 But you eliminate one and you leave
3 two.

4 MS. MECHANIC: Objection. What's
5 the question? Is there a question?

6 MR. JONES: Yes.

7 Q. Are you including two days in which
8 there is a price effect from the news in the
9 estimation window that you are detailing here
10 in the regression prep worksheet?

11 MS. MECHANIC: In that one example
12 we just looked at?

13 MR. JONES: No. Across the
14 spreadsheet.

15 MS. MECHANIC: Objection.

16 A. I think I said before that the
17 sample period does not include -- the
18 estimation period for -- to estimate the
19 coefficient on the Bitcoin does not include the
20 measurement T minus one T plus one period over
21 which I'm measuring the abnormal return.

22 Q. It does not or should not include
23 that period?

24 MS. MECHANIC: Objection.

25 A. It should not.

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1 Q. Okay. But you don't know whether or
2 not it does?

3 MS. MECHANIC: Objection.

4 A. The instruction was done to -- to
5 the team member specifically to do that.

6 Q. Right.

7 And if the instructions were not
8 carried out properly and that some of those
9 days remain in the estimation window, then your
10 results are off?

11 MS. MECHANIC: Objection.

12 A. Not necessarily. It's -- it needs
13 to be tested. But it's unclear whether
14 there -- many of the -- many of the statistical
15 significance results that I received may have
16 and will likely remain in tact.

17 Well, without testing -- without
18 testing, I can not say one way or the other.

19 Q. Does it undermine your confidence
20 and the opinion that you've rendered based on
21 this data?

22 MS. MECHANIC: Objection.

23 A. My opinion -- my opinion is -- is
24 the same because I know that the statistical
25 significance results carry over to longer

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1 sample periods, like 90 days. And as you have
2 seen yourself, in the 180 days.

3 So therefore, not removing,
4 hypothetically, two observations out of 180, is
5 unlikely to change the results in the
6 statistical significance.

7 Q. What's your basis for saying that?
8 Is it just two is not very much -- two is not a
9 high percentage of 180?

10 MS. MECHANIC: Objection.

11 A. It's a very small percentage of a
12 sample, that's correct.

13 Q. But if the -- if the results -- if
14 the price change is abnormal for those days, it
15 could abnormally throw it off even though it
16 may only be a small percentage of the days,
17 correct?

18 MS. MECHANIC: Objection. Asked and
19 answered. A few times.

20 A. Again, my answer is that, if this --
21 if -- if there's certain days where it's
22 included where they should not have been
23 included, sitting here, I'm not prepared to
24 argue or make any statements that would change
25 the results or my opinion.